

STATE OF MICHIGAN
COURT OF APPEALS

ELAINE FRANKLIN,

Plaintiff-Appellant,

v

SCOTT FRANKLIN,

Defendant-Appellee.

UNPUBLISHED

June 1, 2010

No. 289255

Oakland Circuit Court

LC No. 2008-093752-PS

Before: SAAD, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals as of right a trial court order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). Because the Uniform Fraudulent Transfer Act does not encompass transfers of stolen or otherwise illegally obtained assets, we affirm.

Defendant is an adult son of plaintiff. In a prior trial court action, plaintiff sued and obtained a judgment against defendant's brother (plaintiff's other son), Jason Franklin, for fraud. Apparently, Jason withdrew a significant amount of funds from a bank account held jointly in his and plaintiff's name, without authority. Jason then placed the funds in an account he held jointly with defendant, withdrew some of the funds from that account for his own use, and then left the remaining funds in the joint account for defendant's use. Defendant thereafter withdrew the funds, alleged to be approximately \$235,000, from the joint account. A jury trial concerning the matter ensued and, after a judgment was entered in plaintiff's favor and against Jason, plaintiff moved for a judgment against defendant, who was not a party to the action. According to plaintiff, the transfer of her funds from Jason to defendant was fraudulent under the Uniform Fraudulent Transfer Act (UFTA), MCL 566.31 et seq., thus entitling her to a judgment against defendant. The trial court denied the motion and plaintiff did not appeal that ruling. Plaintiff instead initiated the instant action against defendant, again contending that the transfer of money to defendant fell within the parameters of the UFTA and seeking a judgment against defendant.

In lieu of answering plaintiff's complaint, defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). The trial court granted the motion relying upon MCR 2.116(C)(10), opining that in plaintiff's prior action against her son Jason, the trial court had ruled "judgment debtor Jason Franklin had no interest in the monies, which is a prerequisite to a UFTA claim. . . . Moreover the Court likewise ruled that the Revised Judicature Act (RJA) is not applicable." On appeal, plaintiff contends that the trial court erred in entering summary

disposition in defendant's favor when defendant clearly received a transfer of \$235,000 from a judgment debtor, without consideration, thus rendering the transfer assailable under the UFTA.

We review de novo the trial court's summary disposition ruling. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). We review a motion brought pursuant to this subrule by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, summary disposition is appropriate under MCR 2.116(C)(10). Additionally, issues of statutory interpretation are reviewed de novo. *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005).

We first note that plaintiff claims the trial court made no definitive rulings concerning her UFTA claims against this defendant in the first trial court action, and thereafter directed her to file a separate lawsuit against this defendant under the UFTA. We disagree with both assertions.

In its November 27, 2007 opinion and order in the Jason Franklin lawsuit, the trial court discussed the applicability of the UFTA to Jason's transfer of monies to defendant, indicating that in entering a judgment in plaintiff's favor and against Jason, it "implicitly rejected any contention that Jason had a property right in the money." The trial court also addressed the application of the RJA as it related to plaintiff's request for a judgment against defendant stating, "none of the three circumstances of MCL 600.6128 is applicable here." The trial court did make specific rulings concerning the applicability of the UFTA and the RJA to defendant and, as previously noted, it does not appear that plaintiff appealed these rulings. While the trial court may have indicated that if plaintiff wished to secure a judgment against defendant she should file a separate lawsuit, the trial court did not advise or direct plaintiff as to the nature of the cause of action that should be pled in the complaint. Instead, the trial court simply ruled that, ". . . Plaintiff's proper course of action, if she seeks to pursue a claim against Scott Franklin, is to file a separate lawsuit."

Turning to whether summary disposition of the UFTA claim was appropriate in the instant action, we note that the circumstances under which a debtor's transfer of an asset is considered fraudulent are found at MCL 566.34. That statute provides, in relevant part:

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation in either of the following:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor.

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor did either of the following:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.

(ii) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

MCL 566.31(l) defines “transfer” as:

. . . every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

According to MCL 566.36 a transfer is made under the UFTA when, with respect to an asset that is not real property,

. . . the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this act that is superior to the interest of the transferee. MCL 566.36(1)(b).

It is undisputed that a transfer of approximately \$235,000 was made to defendant, from Jason, and that Jason did not receive a reasonably equivalent value for the money. Relevant to the instant matter, however, MCL 566.36(4) provides that “[a] transfer is not made under this act until the debtor has acquired rights in the asset transferred.” Whether Jason made a transfer under the UFTA is, then, ultimately dependent upon whether Jason acquired rights in the transferred funds. We hold that he did not.

An “asset” under the UFTA is “property of a debtor.” MCL 566.31(b). “Property” for purposes of the UFTA means “anything that may be the subject of ownership.” MCL 566.31(j). “Ownership” is defined in Black’s Law Dictionary (6th ed.) as the “Collection of rights to use and enjoy property, including [the] right to transmit it to others. The complete dominion, title, or property right in a thing or claim. The entirety of the powers to use and disposal allowed by law.”

Of significance, in the prior action between plaintiff and Jason, a jury found that Jason had defrauded plaintiff out of a substantial amount of money—including the money Jason transferred to defendant. The jury found that Jason had no ownership in or legal right to the money. In denying plaintiff’s motion for a judgment against a non-party defendant in the prior action, the trial court also noted, “this Court having entered a judgment for Plaintiff against Jason Franklin, has implicitly rejected any contention that Jason had any property right in the money.” See also, Restatement (Second) Torts, § 229, comment d, (a thief acquires no legal interest in the goods he stole). Thus, while Jason may have had physical custody and control of the stolen money at some point, the money was not his “property” nor did he have “ownership” of the same, as these terms are defined in the UFTA.

The few published Michigan cases addressing the UFTA exclusively involve the transfer of assets to which a debtor undisputedly had legal title. See, e.g., *Estes v Titus*, 481 Mich 573,

581; 751 NW2d 493 (2008)(property held by spouses as tenants by the entirety, which was later disposed of in a divorce judgment, was not subject to UFTA); *Mather Investors, LLC v Larson*, 271 Mich App 254, 256; 720 NW2d 575, 576 - 577 (2006). In contrast, here, the asset alleged to have been transferred was acquired illegally and thus was not the debtor's asset or property. Accordingly, the UFTA is inapplicable. This is not to say that one in plaintiff's position is without any recourse against the recipient of a stolen asset or that such a recipient would always be given a free pass to keep illegally obtained funds. Equitable causes of action, for example, may be viable against a third-party recipient of a stolen asset. Our holding today, however, is merely that where an asset is illegally obtained by an individual and then transferred to another, because the individual had no legal right or legitimate interest in the asset, any transfer of the asset to another does not fall within the parameters of the UFTA.

Affirmed.

/s/ Henry William Saad

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto